Supreme Court, U.S.
FILED
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No. 98-971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

LOUISE B. TRULL,

Petitioner,

vs.

EZRA E. TRULL, ETHAN E. TRULL
and P. ANDRE KATZ,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENT P. ANDRE KATZ

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The instant Petition is the latest in a long line of heretofore failed challenges to the final judgment in a divorce proceeding. Petitioner, Louise B. Trull ("Trull"), is disappointed with the court-ordered division of a parcel of real property. She has appealed that division repeatedly, and her arguments have been universally rejected. Trull's claims arise strictly in state common law. She alleges that her former husband, her own son, and her husband's divorce lawyer, Respondent Andre P. Katz ("Katz"), somehow defrauded her in procuring this court-ordered property division. While Trull's claims are meritless on their own terms, they involve no federal question — important or otherwise — and are not entitled to review by this Court. Sup. Ct. Rule 10. Trull attempts to characterize the dismissal of her fraud claims on a motion to dismiss at the pleadings stage as the denial of her right to a jury trial. This attempt, like the other challenges, is groundless.

Although Trull's petition arises from her recent suit alleging fraud by the respondents, her challenges to the property division were first adjudicated long before this. Specifically, an Illinois divorce court entered a final judgment dividing the property in question, over Trull's objections, on March 3, 1995. App. 3; Pet. 2-3. Trull moved the court to reconsider the division but the divorce court rejected her motion as untimely on March 29, 1995. App. 3-4. Trull then appealed the property division and the Appellate Court of Illinois affirmed the property division on February 13, 1996 — calling Trull's challenge "*waived and meritless.*" App. 4 (emphasis added).

Trull also independently petitioned to vacate the property division pursuant to 735 ILCS 5/2-1401 (West 1996). The stated basis for her petition was alleged fraud by her son, Respondent Ethan E. Trull. App. 4. Thereafter, Trull negotiated, through her counsel, a full settlement on April 1, 1996. The settlement agreement granted a full release of all her claims, including

claims against the attorneys of Trull's former husband — one of whom was Respondent Katz. The settlement agreement also provided that Trull agreed to "withdraw, with prejudice" her petition to vacate. In fact, Trull's attorney had the petition dismissed with prejudice on May 6, 1996. App. 5.

Only after all this transpired, and acting *pro se*, Trull filed the underlying fraud claim against the three respondents on March 5, 1997. This time, in her continued attack on the court-ordered division of the real property between herself and her former husband, Trull alleged fraud in connection with the deeds. The respondents moved to dismiss at the pleadings stage. App. 2. That motion to dismiss was heard by the trial court, and granted on June 30, 1997. The trial court's bases for granting the motion were that the action was barred by the settlement agreement, and Trull's claims had already been rejected twice — by the divorce court, and by the Illinois Appellate Court. App. 1-3.

Trull again appealed. Again the Illinois Appellate Court rejected Trull's claims and affirmed the order of dismissal. Upon *de novo* review, the Appellate Court agreed that the settlement agreement barred all of Trull's claims, that the doctrine of collateral estoppel barred her claims against her son, Respondent Ethan Trull, and that Trull was not entitled to a jury trial because the very purpose of such a motion to dismiss "is to provide a mechanism to dispose of a cause of action without a jury trial if the current claim has been released by a prior settlement." App. 6-9; *see also* 735 ILCS 5/2-619(6) (involuntary dismissal at the pleading stage where claim "has been released . . .") (West 1996). On appeal, Trull argued that her attorney at the time exceeded his authority in procuring the settlement, although Trull never chose to raise a claim against her attorney in the proceeding. The Appellate Court rejected this argument because clients are bound by the acts of their

attorneys, because Trull placed her attorney in a position of apparent authority to negotiate the settlement with opposing counsel, and because Trull subsequently ratified the actions of her attorney anyway. App. 7-9.

Yet again, Trull appealed. Her petition to the Illinois Supreme Court was denied on October 6, 1998. App. 12. As a last resort, Trull filed the instant Petition for Writ of Certiorari on December 14, 1998.

It is abundantly clear that Trull received more than a fair and complete hearing of her "waived and meritless" claims by the Illinois courts. Trull's challenge to her divorce decree sounds in tort, and was rejected both on the merits, and on common law grounds of release, agency, ratification, and estoppel. These claims are not entitled to further review by this Court. None of the primarily Illinois state court decisions cited in Trull's Petition raise the specter of a federal, much less constitutional, question.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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